wholesale discounted rate. The services promoted by BellSouth will, of course, remain available for resale at the tariffed rate less the wholesale discount. A competitor may offer any promotional incentive it wishes to respond to a BellSouth promotion.

Link-Up and Lifeline Service

The Commission has previously ordered that these services shall be available for resale to those customers that qualify for this service. Currently, Lifeline service is not available in Kentucky. AT&T may offer Link-Up service only to those customers eligible to receive them. AT&T is required to discount the Link-Up service by at least the percentage currently used by BellSouth. In addition, AT&T is responsible for applying to NECA to receive compensating funds as BellSouth currently does.

N11 and 911 Services

N11 services are not available in Kentucky. Therefore, this issue is moot. 911 services, which are purchased by numerous governmental entities in Kentucky, are telecommunications services available to users who are not telecommunications providers. Therefore, they shall be made available for resale at the wholesale discounted rate as outlined in Section 251(c)(4)(A) of the Act. The Commission reaffirms its previous decision on this issue.

State-Specific Mandated Plans

BellSouth does not currently offer any state-specific mandated discount plans to its customers in Kentucky. Consequently, this is a not an issue at present. Should any discounted tariffs be required in the future, AT&T will be allowed an opportunity through the complaint process to present its argument for resale to the Commission.

Use and User Restrictions

AT&T requested that the Commission reconsider its decision on this issue reached in Case No. 96-431.[4] In that case the Commission found that the general subscriber tariff of any ILEC should be the basis for the terms and conditions of resale offered to competitors.[5] The basis for AT&T's request is paragraph 939 of the FCC's First Report and Order in FCC 96-325,[6] which states that resale restrictions, including those in an ILEC's tariff, are presumptively unreasonable. AT&T also points out that paragraph 939 gives the ILEC the burden of proving that a proposed restriction is reasonable and nondiscriminatory. The Commission concurs with AT&T's position and will modify its decision in Case No. 96-431 to require that an ILEC must support its position that a particular tariff condition or limitation is reasonable.

Non-Recurring Charges

BellSouth argues that non-recurring charges should not be subject to the wholesale discount because they represent services that do not have any avoided costs. However, although individual services may have different levels of avoided costs, the wholesale discount rate is set at a composite rate for all services. Therefore, while some services may have more or less avoided cost, the wholesale discount rate appropriately

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4 Case No. 96-431, Order dated December 20, 1996.

5 Id. at 7-8.

6 Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, First Report and Order, CC Docket No. 96-98 (August 8, 1996), ("FCC Order").

applies to all services subject to resale. Accordingly, the proper wholesale discount rate shall be applied to non-recurring charges.

II. APPROPRIATE WHOLESALE RATES (PARTIES' ISSUES 21 AND 22)

In Case No. 96-431, the Commission established a composite wholesale discount rate of 15.1 percent. The decision was based upon the evidence filed by MCI and BellSouth. In this case AT&T has presented new information upon which the Commission has modified its previous analysis. The Commission's decision on the wholesale discount rate in Case No. 96-431 is the starting point for the adjustments that it will make in this proceeding.

In Case No. 96-431, the Commission treated uncollectibles as an indirect expense and calculated that 10.04 percent of this account would be avoided. In this proceeding, AT&T includes 100 percent of the uncollectible expenses in its calculation of the wholesale discount rate, while BellSouth proposes in its resale study to include 100 percent of uncollectible expenses as avoided. In its study based on the FCC Order, BellSouth followed the FCC methodology by including the uncollectible amount only as determined by the indirect allocation factor. However, BellSouth witness Reid testified at the hearing that it would be unreasonable to classify as BellSouth costs uncollectible costs incurred by resellers pursuant to sale of services to end-users.[7] Since both parties are in agreement as to the level of avoidability of uncollectibles, the Commission will

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[7] Reid, Tr. Vol. 2, at 183-84.

adjust BellSouth's wholesale discount calculation to include 100 percent of the uncollectible expenses as avoided.

The Commission also will adjust the amount of revenues included in its study in Case No. 96-431 to reflect the inclusion of items that will be available for resale. In Case No. 96-431, the Commission mirrored the revenue number used by BellSouth in its wholesale discount studies. However this number is incorrect because BellSouth excluded revenues from CSAs, grandfathered services, non-recurring charges, and E911/911 service revenues on the basis that these items should not be available for resale. The Commission has, however, determined that these items should be available for resale and therefore includes these revenues in its calculations.

The Commission will also make an adjustment to reflect a change in the calculation of the indirect expense factor. AT&T correctly pointed out that the calculation of the indirect expense allocation factor should be computed by dividing directly avoidable expenses by total direct expenses, not total expenses. The Commission changes the calculation of the indirect factor by including only total direct expenses in the denominator.

The issues discussed above concern modifications to the study in Case No. 96-431. The following are Commission decisions regarding issues proposed by AT&T in this proceeding.

In its avoided cost study AT&T has included as avoided costs Accounts 6220, operator systems, and 6560, depreciation/amortization of operator systems. The company determined that the percent of avoided costs in these accounts should mirror

the percentage of avoided costs in the call completion and number services accounts as determined by the Commission in Case No. 96-431.

At paragraph 919 of the FCC's First Report and Order, the FCC determined that plant specific and plant nonspecific expenses are presumptively not avoidable with the exception of general support expenses. Accounts 6220 and 6560 are included in the group of accounts which are presumptively not avoidable. FCC Rule 51.609, "Determination of avoided retail costs," states that costs in these accounts may be treated as avoided retail costs only to the extent that a party proves to a state commission that specific costs in these accounts can be avoided. Accordingly, the burden of proof in this case lies with AT&T.

AT&T's assumption regarding the relationships between the referenced accounts does not, in the opinion of this Commission, meet that burden of proof. The company has not demonstrated that the percentage of avoided cost in Accounts 6621, call completion, and 6622, number services, also applies to Accounts 6220, operator systems and 6560, depreciation/amortization of operator systems. Neither has it provided other proof that the current assumption or any other assumptions regarding avoided costs that may reside in these accounts is valid and satisfies the burden of proof contemplated in the FCC's rules. Therefore, on the basis of the existing record in this case, the Commission rejects AT&T's argument that these accounts are 75 percent avoidable.

AT&T also proposes that 20 percent of BellSouth's costs in Accounts 6533, testing, and 6534, plant administration expenses, be deemed avoidable. These accounts

are nonspecific plant accounts and are therefore subject to the same restrictions as Accounts 6220 and 6560. AT&T's argument is based upon its estimate that approximately 50 percent of its overall testing and plant administration costs involve end-user testing and trouble shooting.[8] Based on this estimate of activity, AT&T opines that 20 percent of BellSouth's costs in these accounts are avoided.[9] AT&T notes that BellSouth provided no support for its position that none of the costs in these accounts are avoided and that BellSouth provides no response to AT&T's reasonable estimate that 20 percent of these costs will be avoided.

In denying AT&T's proposal to include 20 percent of the costs in this account as avoidable, the Commission again relies upon the FCC's final rules that put the burden of proof of avoidability on the ALEC. BellSouth is not required to establish that these costs are not avoidable. AT&T has not shown that its experience with these expenses as a long-distance carrier is necessarily comparable to BellSouth's experience with these expenses as an ILEC. Therefore, the Commission will not require that these accounts be considered in determining the wholesale discount rate.

Finally, AT&T proposes to classify as avoidable capital costs and taxes on capital related to general support assets. AT&T opines that if general support expenses are considered indirectly avoidable, then a portion of general support related investment should be also avoided. AT&T contends that the Commission has already found that BellSouth in fact will avoid certain investment costs and cites Appendix 1A of the MCI-

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8 AT&T's Post-Hearing Brief, filed January 21, 1997, at 21.

9 Id. at. 21-22.

BellSouth Order in Case No. 96-431. AT&T includes $5.010 million as avoided return and income taxes. However, Appendix 1A deals exclusively with operating expenses and does not include any investment costs.

The Commission has already deemed inappropriate AT&T's inclusion of operator system expense and depreciation in its avoided cost study; therefore, it is inappropriate to allow a return and tax component for operation systems in the study. AT&T's study also determines the return and tax component on gross telephone plant in service. However, the rate of return methodology used by this Commission determines a company's appropriate net operating income and resulting revenues and expenses on the basis of net telephone plant. AT&T's methodology is not consistent with that used by this Commission. The Commission will adhere to its usual methodology and will not include a return and tax component as an avoided cost in this arbitration.

Based upon the preceding analysis, the Commission determines that the appropriate overall wholesale discount rate is 16.26 percent as shown in Appendix 1. Consistent with its decision in Case No. 96-431, the Commission determines that a separate discount rate for residential and business services is appropriate and calculates these rates at 16.79 percent and 15.54 percent, respectively, as shown in Appendix 1A.

III. NOTICE TO WHOLESALE CUSTOMERS OF INTRODUCTION OF NEW SERVICES, DISCONTINUANCE OF EXISTING SERVICES, OR REVISIONS OF EXISTING SERVICES (PARTIES' ISSUE 11)

AT&T states that it should receive notice of BellSouth's introduction of new services and discontinuance or revision of existing services at the same time BellSouth provides itself notice of such proposed changes. BellSouth has agreed to give 45-days'

notice. BellSouth also states that this issue has been resolved.[10] However, the record does not indicate that the parties have reached agreement regarding AT&T's specific request that the Commission require BellSouth to notify resellers at least 45 days prior to the effective date of the change or concurrently with BellSouth's internal notification process, whichever is earlier.[11]

The Commission will require BellSouth to provide 45-days' notice to AT&T of new services or the discontinuance or revisions of existing services. However, on a case-by-case basis, should 45-days' notice of a change appear inadequate, AT&T may petition the Commission for additional time prior to the implementation of the BellSouth service changes. If this matter has been resolved in a different manner than stated herein, the Commission will review the issue when the parties file their interconnection agreement.

IV. REAL-TIME AND INTERACTIVE ACCESS VIA ELECTRONIC INTERFACES (PARTIES' ISSUE 5)

AT&T requests electronic interactive access to perform pre-ordering; ordering; provisioning; maintenance/repair; and billing. BellSouth and AT&T seem to agree upon the broad issues involved but to disagree on the details.

The Commission recognizes the importance of real-time access in a competitive environment and agrees that BellSouth should provide this access. The FCC's target date

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[10] BellSouth Post-Hearing Brief, filed January 21, 1997, at 25.

[11] See AT&T Post-Hearing Brief at 40.

for such access was January 1, 1997.[12] Accordingly, BellSouth should, in good faith, attempt to provide the access as soon as possible. In the meantime, it must offer AT&T an interim solution. Permanent solutions should be available and should be implemented no later than June 30, 1997. The resultant costs incurred by BellSouth should be borne by the ALECs on a fairly apportioned basis. As competition develops, additional ALECs will be required to bear their portion of the costs.

The Commission addressed the issue of access to customer records in Case No. 96-440,[13] and it adheres to that decision here. When customer information is withheld from an ALEC, a competitive disadvantage is created. To offer relief, the Commission has concluded that an ALEC's provision of a blanket Letter of Authorization to the ILEC shall be sufficient to allow the ALEC access to customer records.

V. PROPOSED REQUIREMENT THAT BELLSOUTH ROUTE CALLS FOR OPERATOR SERVICES AND DIRECTORY ASSISTANCE DIRECTLY TO AT&T'S PLATFORM (PARTIES' ISSUE 6)

AT&T argues that direct routing is technically feasible and therefore should be provided in the resale environment. AT&T says BellSouth can provide this capability by using its Advanced Intelligent Network ("AIN"). AT&T asserts that Bell Atlantic has

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12 In FCC 96-476, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98 (December 13, 1996), Paragraph 11, the FCC stated it does not intend to initiate enforcement action against ILECs that do not meet the January 1 date but are making good faith efforts to provide the access "within a reasonable period of time, pursuant to an implementation schedule approved by the relevant state commission."

13 Case No. 96-440, Petition by MCI for Arbitration of Certain Terms and Conditions of a Proposed Agreement with GTE South Incorporated Concerning Interconnection and Resale under the Telecommunications Act of 1996, Final Order dated December 23, 1996.

already agreed to provide this function through its AIN by April 1997. While AT&T acknowledges that switches provide only a finite number of line class codes, it argues that they can and should be allocated to new entrants on a "first come, first served" basis. AT&T also states that the Commission has already held, in Case No. 96-431, that BellSouth should brand all calls when offering services for resale where technically feasible. AT&T asserts that the technology required to brand calls and to route calls to a provider's operator services is the same since, in either case, there must be a way to distinguish AT&T customers from BellSouth customers.

BellSouth characterizes the requested capability as "local switching with selective routing" and argues that it is technically unfeasible. Citing the limited capacity of the switches, it argues, inter alia, (1) that line class codes for selective routing could not be offered to all ALECs and limitation would be unfair to carriers who did not receive the function; and (2) that exhaustion of the switch would restrict the service variations ALECs could offer as well as the ability of BellSouth to provide new services. BellSouth also says its existing AIN capabilities cannot provide the requested selective routing. However, BellSouth explains that it is seeking a solution and urges the Commission to deny AT&T's request at this time.

The Commission has already concluded, in Administrative Case No. 355,[14] that it will not require ILECs to furnish resold tariffed services minus operator services. The Commission reaffirms that decision here, but notes that, if an ILEC and reselling ALEC

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[14] Administrative Case No. 355, Order dated September 26, 1996.

reach a mutual agreement in regard to such service separations, the Commission will accept this individual arrangement.

If, however, an ALEC provides service through unbundled elements, an ILEC shall provide routing for the ALEC's customers' calls for operator services and directory assistance. If an ILEC asserts that the service is not technically feasible, it bears the burden of proof before the Commission. BellSouth has not borne that burden in regard to the routing issue in an unbundled element environment.

VI. BRANDING (PARTIES' ISSUE 7)

As previously stated herein, the Commission does not require ILECs to furnish resold tariff services minus operator or directory assistance services, although if an ILEC and an ALEC agree to a wholesale rate for a service without operator services or directory assistance services, the Commission will accept their arrangement. If, on the other hand, an ALEC provides the service through purchase of unbundled elements, then the ILEC shall provide customized routing for 0+, 0-, 411, 611, and 555-1212 calls. If an ILEC asserts that customized call routing is not technically feasible, it has the burden of proving its claim.

AT&T argues that directory assistance service and operator services should be branded as it requests. BellSouth asserts that it is not required by the Act to brand operator or directory services on an individual brand basis, and that such branding is not technically feasible.

The FCC has concluded that where operator, call completion or directory assistance is part of a service or service package, failure of the ILEC to comply with

branding requests presumptively constitutes an unreasonable restriction on resale except in cases where it is not technically feasible.[15] The ILEC should, however, be compensated for costs incurred in complying with branding requests by the carrier which made the request.

The Commission finds, therefore, that in those instances where branding of operator services is technically feasible, and where such branding is necessary for parity of service, it should be provided. However, the Commission will not require BellSouth to brand directory assistance for AT&T because it does not brand its own. Should BellSouth initiate branding of its directory assistance, it must also offer competitors the option to have their calls branded.

Where branding does take place pursuant to the terms described herein, BellSouth shall determine the additional cost it will incur to provide it and shall bill AT&T for such costs. AT&T or BellSouth may petition the Commission for resolution of any billing disputes.

VII. APPEARANCE OF AT&T ON BELLSOUTH'S DIRECTORY (PARTIES' ISSUE 9)

AT&T argues its logo should be displayed on BellSouth's telephone directories as BellSouth's logo is displayed. However, this dispute is no longer at issue, since the Commission has already addressed it. By Order dated November 21, 1996, BellSouth Advertising Publishing Corporation ("BAPCO") was denied intervention in this proceeding. In that Order, the Commission noted that AT&T and other ALECs that have directory

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[15] See FCC Order, Paragraph 971.

publication needs must negotiate and contract directly with BAPCO. Accordingly, the Commission determined it would not address issues involving BAPCO in this proceeding. Finally, according to the information BAPCO has filed in this proceeding, on August 14, 1996, it entered into a complete directory publications agreement with AT&T. AT&T has produced no new evidence to indicate that the Commission should reconsider its November 21, 1996 decision.

VIII. ACCESS TO TEN SPECIFIED UNBUNDLED NETWORK ELEMENTS REQUESTED BY AT&T (PARTIES' ISSUE 14)

AT&T requests that BellSouth unbundle ten specific elements and their features, functions, and capabilities. As AT&T states, the Commission has previously found that it is technically feasible for BellSouth to provide these elements.[16] A mutual resolution has been reached for eight of the requested elements, while issues regarding the AIN and the Network Interface Device ("NID") remain in dispute.

BellSouth agrees to provide unbundled access to its AIN elements; however, it argues that mediation devices are necessary to ensure network reliability and security.[17] The Commission therefore requires AT&T to network through a mediation device for a 90 day period. If, during this period, AT&T exhibits its ability to interface reliably within the AIN network, use of mediation devices shall be discontinued.

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[16] See AT&T Post-Hearing Brief at 41, citing the Commission's Order in Case No. 96-431, at 15.

[17] BellSouth Post-Hearing Brief at 28.

BellSouth also raises the issue of safety and network reliability in regard to the unbundling of the NID.[15] AT&T has offered a resolution of the safety issue.[16] Safety performance and reliability are required by the Commission of all carriers. Therefore, the Commission determines that BellSouth shall provide nondiscriminatory access to the NID.

IX. PRICES FOR EACH UNBUNDLED ELEMENT AT&T HAS REQUESTED (PARTIES' ISSUE 23)

The parties have submitted cost studies which rely upon different methodologies and purport to calculate the forward looking total element long run incremental cost ("TELRIC") of BellSouth's unbundled network elements. AT&T used the Hatfield model to derive its estimates of BellSouth's TELRIC element costs as did MCI in Case No. 96-431. The Commission here reaffirms its decision in Case No. 96-431 not to use the Hatfield model as its primary methodology because it does not reflect BellSouth's actual network design and costing processes. BellSouth's TELRIC studies use engineering process models and certain accounting data to estimate its forward-looking TELRIC costs. The Commission finds, however, that the Hatfield model is a useful tool which can be used as an independent estimate to check the reasonableness of BellSouth's TELRIC estimates, particularly since the assumptions underlying the Hatfield model are available for public scrutiny.

Because the arguments offered in this case do not differ in relevant substance from those offered in Case No. 96-431, the Commission sees no reason to revisit the

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15 BellSouth Post-Hearing Brief at 27.

16 AT&T Post-Hearing Brief at 43 (guaranteeing that it will use properly trained technicians in grounding any BellSouth loops and will comply with the National Electric Safety Code).

issues decided in that case and finds, based upon the principles discussed and the decisions reached in that Order, as follows:

For the unbundled loop categories, an $18.20 rate should be set for 2-wire loops. From this base loop rate, we followed the relationship between BellSouth's 2-wire TELRIC and the TELRICs for other loop categories. The $18.20 reconciles the difference between BellSouth's loop study in Administrative Case No. 365 and that submitted in this case. Within 60 days of the date of this Order, BellSouth should, however, provide TELRIC studies for those unbundled network elements for which it has not provided a TELRIC estimate, including the NID and non-recurring charges.

Due to time constraints, the complexity of BellSouth's cost models, and the concerns discussed fully in the final Order in Case No. 96-431, the Commission will conduct additional investigation. The unbundled network element rates prescribed herein reflect the Commission's concerns regarding BellSouth's TELRIC studies. The Commission has made temporary adjustments to BellSouth's cost study results and has set unbundled network element prices accordingly. See Appendix 2. These rates are intended to be temporary pending further investigation of the TELRIC studies and pending consideration of the extent to which non-traffic sensitive ("NTS") and NECA universal service payments may support local service cost recovery. To the extent that adjustments to costs and prices are warranted, the Commission will conduct a true-up on a prospective basis.

In setting initial prices for unbundled elements, the Commission adhered to the following principles first adopted in Case No. 96-431: if BellSouth has furnished a

TELRIC study, the price is equal to TELRIC; if no BellSouth TELRIC has been furnished, we looked to AT&T's Hatfield TELRIC; if neither BellSouth nor AT&T TELRIC study was relevant, we looked to BellSouth's proposed true-up price; and if none of the above was available, we looked to BellSouth's existing tariffed rate.

Finally, the recovery of NTS revenue streams is also of concern to this Commission. In Administrative Case No. 355, the Commission signaled its intent to allow LECs to continue to recover their NTS revenues, currently recovered through toll and access charges, through a universal service fund. Some years ago, each LEC's NTS revenue requirement was residually calculated and was intended to support local service. The Commission does not, however, intend that local service costs currently being recovered through access charges and ultimately through the universal service fund will be recovered twice.[20] After examining BellSouth's cost studies and pricing proposals, the Commission cannot ascertain whether or how these local service costs have been considered. This issue will figure prominently in the Commission's upcoming investigation.

X. PRICES FOR CERTAIN SUPPORT ELEMENTS RELATING TO INTERCONNECTION AND NETWORK ELEMENTS (PARTIES' ISSUE 26)

AT&T asserts that access to poles, conduits, ducts, and rights-of-way should be priced at TELRIC plus a reasonable allocation of forward-looking joint and common

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[20] The Commission has related concerns regarding NECA support payments and the extent to which local service costs are recovered in those.

costs. AT&T also asserts that BellSouth should be required to produce adequate cost documentation to enable the Commission to set cost-based prices.

BellSouth proposes that established tariffed or contract prices should be used for existing support functions or services and that, to the extent a new support function is necessary, the price should be set at cost plus a reasonable profit. The parties also disagree on terms for interim number portability and physical collocation.

The Commission finds that the rates for access to poles, ducts, conduits, and rights-of-way should be developed consistently with principles found at 47 U.S.C. Section 224(d). In addition, the Commission reaffirms its decision in Case No. 96-431 that each LEC should bear its own costs for providing remote call forwarding as an interim number portability option. Finally, the Commission finds that the costs for physical collocation on BellSouth's premises should be based on comparable prices for leased office space per square foot.

XI. LIMITATIONS ON AT&T'S ABILITY TO COMBINE UNBUNDLED NETWORK ELEMENTS WITH ONE ANOTHER, WITH RESOLD SERVICES, OR WITH AT&T'S OR A THIRD PARTY'S FACILITIES TO PROVIDE TELECOMMUNICATIONS SERVICE (PARTIES' ISSUE 15)

AT&T states that the Commission has already decided that BellSouth may not restrict a new entrant's ability to "combine network elements with one another, with resold services, or with its own or a third party's facilities."[21] AT&T is correct that the Commission has ruled that BellSouth must, in accordance with the Act, at Section

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21 AT&T Brief at 12, citing Case No. 96-431, Final Order dated December 20, 1996, at 20-21.

251(c)(3), provide network elements "in a manner that allows requesting carriers to combine such elements in order to provide such telecommunications service." The Commission affirms that decision here and rejects BellSouth's argument that the purchase of elements to create service pursuant to Section 251(c)(3) must be priced at the rate for purchase of service for resale under Section 251(c)(4). However, AT&T is incorrect in asserting that the Commission has ruled that new entrants must be permitted to combine network elements purchased from BellSouth with resold services.

AT&T may combine network elements, whether those elements are its own or are purchased from BellSouth, in any manner it chooses to provide service. If AT&T wishes to purchase service for resale from BellSouth pursuant to Section 251(c)(4), it purchases the entire service as is and at the resale rate.

XII. WHETHER BELLSOUTH MUST MAKE RIGHTS-OF-WAY AVAILABLE TO AT&T ON TERMS AND CONDITIONS IT PROVIDES TO ITSELF (PARTIES' ISSUE 16)

BellSouth and AT&T agree that right-of-way space should not be reserved by any party and that available space should be allocated on a "first come, first served" basis. However, BellSouth believes, as AT&T does not, that it should not be required to give access to its maintenance spare at any time. A maintenance spare is space reserved on a pole or in a conduit on which BellSouth can place facilities quickly in response to an emergency such as that created by a cut or destroyed cable. BellSouth argues that extensive delays in service restoration could result if BellSouth's maintenance spare is forfeited. AT&T's position is that there should be a common emergency duct and inner duct for use in emergency service restoration situations. AT&T does not discuss

maintenance spares attached to poles. AT&T also proposes a priority restoration schedule.

Because the Commission believes interrupted service must be promptly restored, it will not order BellSouth to forfeit its maintenance spares. Neither will the Commission order the arrangement promoted by AT&T since the need for access to maintenance capabilities relative to cable restoration is only required when an ALEC has placed its own cable, a situation which has not yet arisen. Complaints or further consideration of AT&T's proposal will be considered as ALECs begin to run their own cable. In addition, because the restoration plan used by BellSouth in the past meets the Commission's minimum requirements, no modified plan need be established.

Other proposals made by AT&T are as follows: (1) occupation of specific pole attachment and duct space should be determined by joint engineering arrangements between AT&T and BellSouth; (2) AT&T should be permitted to lash its cable to the existing facilities of other carriers as well as to its own; (3) BellSouth should advise AT&T of environmental, health and safety inspections; (4) manhole space for racking and storage of cable should be provided; and (5) BellSouth should acknowledge the presence of environmental contaminants in its conduit system.

Pursuant to federal law, ILECs must provide to ALECs the same access to rights-of-way that they provide themselves. This mandate encompasses all of the above items; therefore, it is not necessary to address each issue independently. BellSouth must provide the same rights-of-way access, notifications and arrangements to competing carriers as it provides itself. Should instance arise where AT&T or any other ALEC

believes discrimination has occurred, the complaint process is available to resolve the issues.

XIII. ACCESS TO UNUSED TRANSMISSION MEDIA (PARTIES' ISSUE 19)

Unused transmission media constitute a valuable resource to the public switched network, and therefore AT&T should have the right to lease or buy it from BellSouth for the provision of telecommunications services. The Commission originally concluded in Case No. 96-431 that the ALEC should begin construction using any requested fiber within six (6) months of the execution of a lease or buy contract. The Commission further concluded that the ALEC should not propose to lease or buy unused transmission media for future unspecified use and that BellSouth should not refuse to lease or sell it to the ALEC without legitimate business purposes. However, in Case No. 96-431,[22] the Commission amended its decision to state that, if BellSouth refuses a request, it should show that it will need this unused transmission media within three (3) years rather than the five (5) years specified in the December 20, 1996 Order.

The Commission regards unused transmission media as a pathway for telecommunications service such as a pole, duct, conduit, or right-of-way. Therefore, unused transmission media is neither an unbundled element nor a telecommunications service available for resale. Because it fits neither of these definitions it shall not be priced as such. The parties are free to negotiate rates and may bring complaints regarding unfair pricing or restrictions of use to the Commission.

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22 Case No. 96-431, Order dated January 29, 1997.

XIV. PRICE FOR CALL TRANSPORT AND TERMINATION/BILL AND KEEP (PARTIES' ISSUES 24 AND 25)

AT&T argues that the price for the transport and termination of local traffic should be set at TELRIC. BellSouth argues that TELRIC pricing is inappropriate and that the rate for transport and termination should be established to recognize local traffic's relationship to intrastate switched access because local interconnection provides the same functionalities as switched access.

The Commission has concluded that interconnection should be priced at cost plus a reasonable profit based on Section 252(d)(1) of the Act. Thus, the pricing for termination of local calls should be at TELRIC so that this compensation is based on actual cost instead of upon subsidies that are present in existing rates.

The Commission has stated that "the market will be best served by swift development of the necessary recording and billing arrangements to provide reciprocal compensation among local carriers."[23] Thus, the Commission will require reciprocal compensation unless the two parties agree to a bill and keep arrangement not to exceed one year.

XV. WHETHER BELLSOUTH MUST PRICE BOTH LOCAL AND LONG DISTANCE ACCESS AT COST (PARTIES' ISSUE 27)

AT&T argues that because access, whether local or long-distance, is a "network element" pursuant to the Act, it must be sold to AT&T at the cost-plus formula provided in Section 252(d)(1) of the Act. However, Section 251(c)(2) of the Act specifically requires ILECs to interconnect with other carriers for the "transmission and routing of

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[23] Case No. 96-431, Order dated January 29, 1997 at 10.

telephone exchange service and exchange access." AT&T offers no convincing reason why Section 251(c) should be interpreted to include long-distance access as well as exchange service. Furthermore, the FCC has previously decided that if an IXC requests interconnection to originate or terminate its interexchange traffic, it is not entitled to receive interconnection pursuant to Section 251(c)(2). Accordingly, the Commission agrees with BellSouth that this issue is beyond the scope of this arbitration proceeding and dismisses it from consideration.

XVI. RATES FOR COLLECT, THIRD PARTY, AND INTRALATA CALLS (PARTIES' ISSUE 28)

AT&T proposes that BellSouth be required to use the Centralized Message Distribution System ("CMDS") process currently used on an interLATA basis for billing of intraLATA collect, third-party, and calling card calls where all such calls are billed at the originating service provider's rates.

BellSouth maintains that a regional system for processing these types of calls does not exist today and that BellSouth can only bill its own retail rates for these calls because it has no access to AT&T's rates. BellSouth says it will provide AT&T the requested capabilities on a state-specific level, but cannot, at this time, do so regionally.

The Commission finds it inappropriate in this proceeding to require regional uniformity through implementation of CMDS in the manner proposed by AT&T. Accordingly, BellSouth may bill its own rates for intraLATA collect and third number calls.

XVII. APPROPRIATE CONTRACTUAL TERMS AND CONDITIONS INCLUDING DISPUTE RESOLUTION, PERFORMED REQUIREMENTS, LIABILITY/INDEMNITY, SPECIFIED "DIRECT MEASURES OF QUALITY," EXPLICIT ASSUMPTION BY BELLSOUTH OF RESPONSIBILITY FOR CAUSING AT&T UNCOLLECTIBLES (PARTIES' ISSUES 3, 4, 29)

The Act requires, at Section 251(c)(2)(C), that ILECs must provide service to requesting carriers "that is at least equal in quality to that provided by the local exchange carrier to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection." Issues numbered 3, 4, and 29 of the Joint Issues List deal with demands made by AT&T that it says are necessary to ensure that BellSouth complies with its responsibilities under the Act. AT&T asks for specified Direct Measures of Quality; terms to ensure that BellSouth will assume responsibility for its errors in causing AT&T unbillable or uncollectible revenues; and terms providing for dispute resolution, performance requirements, and liability and indemnity.

AT&T argues that, since BellSouth has a monopoly, AT&T can only look to it to purchase service for resale, interconnection, or unbundled elements. Consequently, AT&T concludes that mechanisms must be in place to ensure that BellSouth complies with the Act.

The Commission agrees that negotiated terms for alternative dispute resolution, objective measurements of the parties' expectations, and mutual liability provisions may be useful to both parties to any contract. However, it is unnecessary for the Commission to require any such terms and conditions. The service parity requirements of the Act are clear, and BellSouth has not indicated that it will fail to abide by them. There is no reason for this Commission to assume that BellSouth will not in good faith comply with

its obligations under the law. Should problems arise regarding the quality of service provided, AT&T may bring the matter to the Commission's attention.

Having reviewed the record and having been otherwise sufficiently advised, the Commission THEREFORE ORDERS that:

1. The parties shall renew their negotiations to complete their agreement in accordance with the principles and limitations described herein.

2. Best and final offers on terms which are encompassed within the arbitrated issues and upon which the parties remain unable to agree shall be filed within 30 days of the date of this Order.

3. Additional cost studies required to complete the Commission's investigation into appropriate pricing as discussed herein and in the final Order in Case No. 96-431 shall be filed by BellSouth within 30 days of the date of this Order.

Done at Frankfort, Kentucky, this 6th day of February, 1997.

By the Commission

DISSENT OF CHAIRMAN LINDA K. BREATHITT

I respectfully dissent from Section XI, Parties' Issue 15 regarding pricing of recombined network elements. My rationale is set forth in Case No. 96-431, Petition by MCI for Arbitration of Certain Terms and Conditions of a Proposed Agreement with BellSouth Telecommunications, Inc. Concerning Interconnection and Resale under the

Telecommunications Act of 1996, Order dated January 29, 1997 (Linda K. Breathitt, dissenting).

Linda K. Breathitt
Chairman

ATTEST:

Executive Director